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March 17, 2021

Rosemary Hoerning
City Manager
City of Upland
460 N Euclid Avenue
Upland, CA 91786

Re: Conflict Waiver - Representation of City of Montclair

Dear Ms. Hoerning:

As you know, Best Best & Krieger LLP ("BBK") was recently selected to represent the City of Upland ("Upland") on various matters as its City Attorney (the "Upland Matters"). On February 18, 2020, we sent you a letter informing you of BBK's ongoing representation of the City of Montclair ("Montclair") on a range of matters as special counsel. While we believe this work is not adverse to Upland, we want to inform you about one discrete matter in which Upland and Montclair may have conflicting interests. The matter relates to the Upland Basin Dam and involves assistance with obtaining public records and understanding Montclair's options. The matter is transactional only, and BBK would not engage either side in any adverse litigation relating to this or any matter (collectively, the "Basin Matter"). In our February 18, 2020 letter, we indicated that we would need to request Upland's and Montclair's informed consent in the form of a conflict waiver letter as required by our Professional Rules of Conduct. Now that BBK will be serving Upland as City Attorney, we are now seeking your informed consent.

BBK's representation of Upland in the Upland Matters and BBK's representation of Montclair on the Basin Matter are completely unrelated. However, the California Rules of Professional Conduct prohibit us from representing two current clients with adverse or potentially adverse interests without their informed written consent even if the separate matters are unrelated. Therefore, we write to advise you of the conflict of interest, the potential impact of our representation, and to obtain Upland's informed written consent to proceed.

RULES OF PROFESSIONAL CONDUCT

Rule 1.7 of the California Rules of Professional Conduct provides in pertinent part:



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- (a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.
- (d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), . . . and:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law; and
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

SCOPE OF REPRESENTATION & DISCLOSURES

As part of this consent, Upland agrees that we may represent Montclair in the Basin Matter and possibly other matters as needed as their Special Counsel that do not involve Upland, while we concurrently represent Upland on the Upland Matters. Our representation of Upland and Montclair as described in this letter is not prohibited, but requires your consent. We do not believe our representation of Montclair will impair our competency, diligence or loyalty to Upland nor will it otherwise materially limit our representation of Upland or impair our independent professional judgment in any way. We do not think the relationship will create any appearance of impropriety. However, these are all things you should consider before providing your informed consent as requested here.

In the event that circumstances change, or we become aware of new information that requires a new consent from Upland and Montclair, you will be notified of that fact immediately, and continued representation will be subject to the informed written consent of the involved parties. Should a further conflict of interest develop, or if the relationship should materially limit our representation of either client, we may be required to terminate our representation, which could impact your attorney's fees and costs should you need to hire new counsel at that time.



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ETHICAL SCREEN

BBK will create an ethical screen based on the following details regarding our representation of Upland in the Upland Matters and our representation of Montclair in the Basin Matter:

(1) BBK's representation of Upland in the Upland Matters does not involve any issues related to BBK's representation of Montclair in the Basin Matter and vice versa.

(2) The Upland Matters will be handled primarily by me, Stephen Deitsch, Thomas Rice and possibly other attorneys not working on the Basin Matter (collectively, the "Upland Team").

(3) The Basin Matter will be handled primarily by Alisha Winterswyk, Rebecca Andrews, Ali Tehrani, Hannah Park and possibly other attorneys not working on the Upland Matters (collectively, the "Montclair Team").

(4) The Firm will create an ethical wall separating the Upland Matters from the Basin Matter and vice versa. Specifically:

A. Members of the Upland Team, and members of the Montclair Team shall not share substantive information regarding their respective work on the subject matters with each other. Others at the firm shall not share substantive communications from one team to the other regarding the Upland Matters and the Basin Matter.

B. All teams shall maintain separate physical files which are clearly marked reflecting that they are part of the ethical screen.

C. All teams shall maintain separate electronic files which are only accessible to their respective teams.

D. Everyone at the firm shall be instructed as to these requirements.

YOUR CONSENT

If you consent to our continued representation of Montclair, please sign this consent letter. This consent will not waive any protection that you may have with regard to attorney-client communications with us in the Upland Matters. Those communications will remain confidential and will not be disclosed to any third-party without your consent.



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Please consider this matter carefully, and do not hesitate to contact us if you have any questions or concerns. You may wish to confer with independent legal counsel regarding this disclosure and your consent, and you should feel free to do so.

Your execution of this consent form will constitute an acknowledgment of full disclosure in compliance with the requirements of Rule 1.7 of the California Rules of Professional Conduct previously quoted in this letter, and your consent to proceeding with our representation of you.

If you have any questions, please do not hesitate to call.

Sincerely,

Stephen P. Deitsch
of BEST BEST & KRIEGER LLP

CONSENT

By this letter, Best Best & Krieger LLP has explained the existing and/or reasonably foreseeable potential risks and conflict(s) of interest in the above-referenced matter, and has informed Upland of the possible consequences of this representation and these conflicts. Upland understands that it has the right to and has been encouraged to consult with independent counsel before signing this consent, and Upland acknowledges that it has been given sufficient time to do so. Notwithstanding the foregoing, Upland hereby consents and agrees to the matters described in this letter.

By:
Rosemary Hoerning, City Manager

Dated: 3/23/21